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COMMUNICATION FROM THE COMMISSION

**Updating of data used to calculate lump sum and penalty payments to be proposed by
the Commission to the Court of Justice in infringement proceedings**

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I. INTRODUCTION

The 2005 Commission Communication on the application of Article 228 of the EC Treaty¹ (now Article 260 (1) and (2) of the TFEU) established the basis on which the Commission calculates the amount of the financial sanctions (either lump sum or penalty payments) that it requests the Court of Justice to apply when the Commission brings a case before the Court under Article 260(2) TFEU, in the context of infringement proceedings against a Member State.

In a subsequent Communication of 2010² on the updating of the data used for this calculation, the Commission established that these macroeconomic data be subject to revision every year, in order to take into account inflation and GDP movements.

The 2011 Commission Communication on the implementation of Article 260(3) TFEU³ and the 2017 Commission Communication "EU law: Better results through better application"⁴ emphasise that the same method as established by the 2005 Communication applies for the calculation of the financial sanctions which the Commission requests the Court of Justice to apply under Article 260(3) TFEU.

The yearly update provided in this Communication is based on developments in the inflation and GDP of each Member State.⁵ The relevant rate of inflation and GDP statistics to be used are those established two years prior to the update ('t-2 rule'), as two years is the minimum period of time necessary for gathering relatively stable macroeconomic data. This Communication is therefore based on economic data for nominal GDP and the GDP deflator for 2015⁶ and the current weighting of Member State voting rights in the Council.

¹ SEC(2005) 1658; OJ C 126, 7.6.2007, p. 15.

² SEC(2010) 923/3. This Communication has been updated in 2011 [SEC(2011) 1024 final], in 2012 [C(2012) 6106 final], in 2013 [C(2013) 8101 final] and in 2014 [C(2014) 6767 final], in 2015 [C(2015)5511 final] and in 2016 [C(2016)5091 final] for the yearly adaptation of economic data.

³ OJ C 12 of 15.1.2011, p. 1.

⁴ OJ C 18 of 19.1.2017, p. 10.

⁵ According to the general rules set out in the communications of 2005 and 2010.

⁶ The GDP price deflator is used as a measure of inflation. The uniform amounts for lump sum and penalty payments are rounded to the nearest multiple of ten. The minimum lump sums are rounded to the nearest thousand. The 'n' factor is rounded to two decimal places.

II. COMPONENTS OF THE UPDATE

The list of economic criteria to be revised is as follows:

- the standard flat-rate amount for the penalty payment⁷, currently fixed at €680 per day, to be revised in line with inflation;
- the standard flat-rate amount for the lump sum payment,⁸ currently fixed at €230 per day, to be revised in line with inflation;
- the special 'n' factor⁹, to be revised in line with the GDP of the Member State in question taking into account the number of voting rights it has in the Council; the 'n' factor is identical for the calculation of lump sum and daily penalty payments;
- minimum lump sum payments¹⁰ to be revised in line with inflation.

III. UPDATES

The Commission will apply the following updated figures to calculate the amount of the financial sanctions (lump sum or penalty payments) when it brings a case to the Court of Justice under Article 260 (2) and (3) TFEU:

- (1) the standard flat-rate amount for calculating the penalty payment is fixed at **€700** per day,
- (2) the standard flat rate for the lump sum payment is fixed at **€230** per day.

⁷ The standard or uniform flat-rate amount for daily penalty payments is defined as the fixed basic amount to which certain multiplier weightings are applied. The weightings are the coefficients for the seriousness and the duration of the infringement and the special factor 'n' corresponding to the Member State concerned that are to be applied for the calculation of a daily penalty payment.

⁸ The flat-rate amount is to be applied when calculating the lump sum. As regards Article 260 (2) TFEU, the lump sum will result from multiplying a daily amount (resulting from multiplying the standard flat-rate amount for lump sum payments by the coefficient for seriousness and the result of this calculation being multiplied by the special factor 'n') by the number of days the infringement persists between the date of the first judgment and the date that the infringement comes to an end or the date of delivery of the judgment under Article 260(2) TFEU. As regards Article 260 (3) TFEU, according to point 28 of the Commission Communication on "Implementation of Article 260 (3) of the Treaty" (SEC (2010)1371 final; OJ C 12, 15.1.2011, p. 1), the lump sum will result from multiplying a daily amount (resulting from multiplying the standard flat-rate amount for lump sum payments by the coefficient for seriousness and the result of this calculation being multiplied by the special factor 'n') by the number of days from the day after the time limit for transposition set out in the directive expired until the date that the infringement comes to an end or the date of delivery of the judgment under Articles 258 and 260 (3) TFEU. The lump sum calculated on the basis of the daily amount should apply when the result of the above-mentioned calculation exceeds the minimum lump sum.

⁹ The special factor 'n' takes into account the capacity of the Member States to pay (gross domestic product (GDP)) and the number of votes it has in the Council.

¹⁰ The minimum fixed lump sum payment is determined for each Member State according to the special 'n' factor. The minimum fixed lump sum will be proposed to the Court when the summed up daily lump sum payments do not exceed the minimum fixed lump sum.

- (3) The special 'n' factor and the minimum lump sum for the 28 EU Member States are set as follows:

Member state	special factor 'n'	Minimum lump sums (1 000 €)
Belgium	4.85	2799
Bulgaria	1.47	848
Czech Republic	3.09	1783
Denmark	3.01	1737
Germany	20.50	11832
Estonia	0.62	358
Ireland	2.92	1685
Greece	3.17	1830
Spain	11.78	6799
France	17.43	10060
Croatia	1.21	698
Italy	15.10	8715
Cyprus	0.58	335
Latvia	0.68	392
Lithuania	1.12	646
Luxembourg	1.00	577
Hungary	2.51	1449
Malta	0.36	208
Netherlands	6.48	3740
Austria	4.03	2326
Poland	7.45	4300
Portugal	3.21	1853
Romania	3.27	1887
Slovenia	0.86	496
Slovakia	1.62	935
Finland	2.65	1529
Sweden	4.62	2666
United Kingdom	18.90	10908

- (4) The Commission will apply the updated figures to decisions it takes to bring a case before the Court of Justice under Article 260 TFEU as from the adoption of this Communication.